DLA PIPER LLP (US)
By: Raymond M. Williams
Identification No.: 90771
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, PA 19103
(215) 656-3300
(215) 656-3301 (*fax*)
raymond.williams@dlapiper.com

Attorney for Defendants General Electric Company and GE Healthcare Inc.

JANICE AND JAMES CLARK, Plaintiffs, v. GENERAL ELECTRIC COMPANY, GE HEALTHCARE INC., GE HEALTHCARE AS, BAYER CORPORATION, BAYER HEALTHCARE PHARMACEUTICALS INC., and BAYER SCHERING PHARMA AG, Defendants.	:	PHILADELPHIA COUNTY COURT OF COMMON PLEAS June Term, 2008 Case No. 01067
IN RE: GADOLINIUM BASED CONTRAST AGENTS PRODUCTS LIABILITY LITIGATION	:	July Term, 2009 Case No. 1505

DEFENDANTS GENERAL ELECTRIC COMPANY AND GE HEALTHCARE INC.'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER DENYING DEFENDANTS' MOTION TO DISMISS FOR *FORUM NON CONVENIENS*

March 12, 2010

Via Electronic Filing and Service
The Honorable Sandra Mazer Moss
Courtroom 653, City Hall
Court of Common Pleas of Philadelphia County
Philadelphia, PA 19107

Re: *In re: Gadolinium Based Contrast Agent Products Liability Litigation*
Clark v. GE Healthcare Inc., et al.
June Term, 2008, Case No. 001067

Opposing Counsel: James J. McHugh, Jr., Esquire

Filing Date: March 12, 2010

Dear Judge Moss:

Defendants General Electric Company and GE Healthcare Inc. (collectively "GEHC"), through their undersigned counsel, respectfully submit this Motion for Reconsideration of the Court's Order denying Defendants' Motion to Dismiss for *forum non conveniens* pursuant to 42 Pa. C.S.A § 5322(e). GEHC files this motion pursuant to 42 Pa. C.S.A. § 5505 and applicable case law. The only connection between this case and Pennsylvania is that one of the defendants (Bayer Corp.) has its headquarters in Pennsylvania. But although not disclosed in Plaintiffs' Fact Sheet, plaintiffs have pending an identical product liability personal injury suit in state court in Illinois, which omits Bayer Corp., demonstrating that it is not a proper party. This case's lack of significant connections to the Commonwealth of Pennsylvania compels dismissal.

I. FACTS

Plaintiff Janice Clark currently resides in Fort Washington, Maryland with her husband, and co-plaintiff, James Clark. She claims to have contracted a rare disease called Nephrogenic Systemic Fibrosis ("NSF") allegedly caused by her exposure to certain gadolinium based

contrast agents ("GBCAs") used in conjunction with magnetic resonance imaging procedures administered to her in the District of Columbia and the Commonwealth of Virginia. Indeed, the entirety of Ms. Clark's medical treatment for a variety of medical conditions, including end stage renal disease, occurred in Maryland, the District of Columbia and Virginia and none occurred in the Commonwealth of Pennsylvania.

Plaintiffs' only justification for bringing this action in Pennsylvania is that defendant Bayer Corporation's headquarters is located in Pittsburgh, Pennsylvania. But it is clear that a separate subsidiary company, Bayer Healthcare Pharmaceuticals, Inc., manufactured the GBCA product at issue (Magnevist) outside of Pennsylvania and all marketing decisions regarding that product were likewise made outside of Pennsylvania. *See* Aff. of Albert G. Bixler, Esq., Dec. 21, 2009 ¶ 5 ("There are no relevant company witnesses Bayer Healthcare Pharmaceuticals Inc. located in Pennsylvania.") (Ex. 1).[1] Even though the entirety of Ms. Clark's medical treatment, including the administration of the GBCAs she claims caused her NSF, occurred outside of the Commonwealth of Pennsylvania and the GBCAs allegedly at issue were not designed or manufactured in the Commonwealth of Pennsylvania, plaintiffs filed suit in this Court.

Because this case lacked any significant ties to Pennsylvania, on December 23, 2009, GEHC moved to dismiss this case based on the doctrine of *forum non conveniens* pursuant to 42 Pa. C.S.A § 5322(e), so that it could proceed in a forum that had an actual interest in the dispute – *i.e.*, Maryland, Virginia or the District of Columbia. Plaintiff opposed this motion on January

[1] The only Bayer entity with any connections to Pennsylvania (Bayer Corp.), "plays no role in the design, manufacturing or marketing of Magnevist®." *Id.* at ¶ 3. Bayer HealthCare Pharmaceuticals Inc. "is a Delaware corporation with its principal place of business located in Wayne, New Jersey," and Magnevist® is manufactured by a different Bayer entity located in Germany. *Id.* at ¶¶ 4, 6.

4, 2010; GEHC filed a reply on January 12, 2010; and this Court denied GEHC's motion without comment on February 10, 2010. [2]

Although not disclosed in their Plaintiff Fact Sheet, plaintiffs have filed a separate product liability action in Illinois in which they seek damages for the same injuries that they allege in this case. *See* Illinois Complaint, May 4, 2009 (Ex. 2). In the Illinois case, plaintiffs failed to include Bayer Corporation as a defendant suggesting its presence is unnecessary for resolution of plaintiffs' claims. Inclusion of Bayer Corp. in this case therefore is not a sufficient reason for this Court to retain jurisdiction. In fact, as GEHC argued in Illinois and argues here, Maryland, Virginia or the District of Columbia are more appropriate venues for this case.[3]

As GEHC set forth in its motion to dismiss for *forum non conveniens* and above, the facts demonstrate that this case has no meaningful connection with Pennsylvania. Moreover, plaintiffs' filing of an identical personal injury product liability action in Illinois with the notable exception that Bayer Corporation is not a defendant undercuts their claim here that Bayer Corporation has any meaningful connection to this litigation. This further demonstrates that Pennsylvania is not the proper forum for this litigation. Therefore, GEHC respectfully asks this court to reconsider its February 10, 2010 Order and grant GEHC's motion to dismiss for *forum non conveniens*.

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[2] GEHC will not at this time reiterate all of the factual and legal arguments made in its original and reply letter-briefs, but incorporates those arguments by reference.

[3] The Illinois courts have seen fit to grant an interlocutory appeal to resolve this weighty question of jurisdiction before the parties expend time and resources litigating a matter that has no connection with Illinois. *See* Order, Dec. 31, 2009 (Ex. 3). In a contemporaneously filed motion, GRHC asks this Court to consider a similar approach in Pennsylvania.

II. ARGUMENT

A. Pennsylvania Courts Typically Grant Motions To Dismiss For *Forum Non Conveniens* In Cases Having No Significant Ties To The Commonwealth.

Pennsylvania has codified the doctrine of *forum non conveniens*, which states that if "in the interest of substantial justice the matter should be heard in another forum, the tribunal may stay or dismiss the matter in whole or in part on any conditions that may be just." 42 Pa. C.S.A. § 5322(e). In conducting a *forum non conveniens* analysis, courts examine both private and public interest factors to determine which competing forum would be most appropriate to try the dispute. The relevant private factors include "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining willing, witnesses . . . and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Engstrom v. Bayer Corp.*, 855 A.2d 52, 56 (Pa. Super. 2004) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947)). Relevant public interest considerations include "[a]dministrative difficulties [that] follow for courts when litigation is piled up in congested centers instead of being handled at its origin," "[j]ury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation," and the appropriateness of having the trial "in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself," and whether a viable alternative forum is available to the plaintiff *Id.*

Pennsylvania courts have routinely dismissed claims by out-of-state plaintiffs arising from out-of-state injuries unrelated to Pennsylvania under 42 Pa. C.S.A. § 5322(e) and the doctrine of *forum non conveniens*. For example, in *Engstrom*, the court granted a *forum non*

conveniens dismissal of pharmaceutical personal injury claims, where as is the case here, plaintiffs did not live in Pennsylvania, none of their doctors or relevant medical records were in Pennsylvania, the underlying diagnosis and treatment did not occur in Pennsylvania, the alleged injury occurred outside of Pennsylvania, and "[n]one of the witnesses material to the demonstration of [plaintiffs'] damage claims reside[d] in Pennsylvania." *Id.* at 54.[4]

Similarly, the Superior Court of Pennsylvania affirmed a trial court's dismissal for *forum non conveniens* in a case filed in Philadelphia by New Jersey residents who slipped and fell at a New Jersey department store, noting that:

> The Plaintiffs are not residents of Pennsylvania. The pertinent events giving rise to the cause of action occurred outside of Pennsylvania. The relevant medical records of plaintiff's physician after the alleged accident are located outside of Pennsylvania. The known witnesses reside outside of Pennsylvania and any additional witnesses will most likely reside outside of Pennsylvania. Finally, the plaintiffs have another more convenient forum available to them in New Jersey.

Cinousis v. Hechinger Dept. Store, 594 A.2d 731, 733 (Pa. Super. 1991). The defendant department store operated some stores in Pennsylvania, including at least one in Philadelphia, but that connection alone was not enough to make a Philadelphia court the appropriate forum. *Id.* at 731. Because the plaintiffs in *Cinousis* were not residents of Pennsylvania, "the interest of this Commonwealth in providing a forum for its residents to litigate their disputes [was] not implicated." *Id.* at 733. Moreover, the Court reasoned that because "witnesses and documentary evidence" were located in New Jersey it would be more difficult to try the case in Pennsylvania, would have caused undue delay and increased costs for the trial, and "because the events at issue

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[4] This is a significant distinction between the facts in *Wright v. Aventis Pasteur, Inc.*, 905 A.2d 544, 549 (Pa. Super. 2006), where most or all of the products at issue were manufactured and post-marketing surveillance took place in Pennsylvania. Conversely, in this case no witnesses are located in Pennsylvania and no meaningful corporate conduct took place within the Commonwealth. Also in stark contrast to the circumstances in *Wright*, where defendants moved to dismiss on the last day for submission of pretrial motions, deposition discovery has just begun and is not close to completion in this case. *Id.* at 546.

. . . occurred in New Jersey, it is likely that the substantive rights of the parties [would] be determined according to New Jersey law." *Id.* These facts constituted the type of "weighty reasons" that required dismissing the case in Pennsylvania so that it could be re-filed in the appropriate forum – New Jersey, where the alleged injury took place.[5]

Here, all of the relevant private and public interest factors weigh heavily in favor of dismissal and re-filing in Maryland, Virginia or the District of Columbia. Only one party (Defendant Bayer Corporation) is domiciled in Pennsylvania, but no relevant corporate conduct or business activities took place in Pennsylvania.[6] The vast majority of the sources of proof, specifically plaintiffs' medical records, are located in Maryland and the District of Columbia. Use of commissions to obtain out of state depositions of treating physicians and other healthcare providers poses an additional burden to timely completion of discovery. Plaintiffs' treating physicians can be compelled to testify at trial in their home jurisdictions, but cannot be so compelled in Pennsylvania. The courts and jury pool in Philadelphia County are extremely busy dealing with crowded dockets comprised of cases filed by and against Pennsylvania residents concerning disputes with actual connections to the Commonwealth. Finally, given that all of the events at issue in this case took place in Maryland, Virginia or the District of Columbia, the substantive law of those states should govern this dispute. *See Cinousis*, 594 A.2d at 733.

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[5] *See also Jessop v. ACF Indust., LLC*, 859 A.2d 801, 807 (Pa. Super. 2004) (affirming dismissal for *forum non conveniens* of claim that a Kansas resident died from mesothelioma he contracted from exposure to asbestos in Kansas, specifically rejecting argument that dismissal should be denied because defendant conducted business in Pennsylvania and the Commonwealth has an interest in insuring that its corporate citizens do not cause harm).

[6] Plaintiffs' reliance on Bayer Corporation's domicile in opposing dismissal is severely weakened by their actions in Illinois – failing to include Bayer Corporation as a defendant even though they knew prior scans involved the use of Magnevist.

B. Pennsylvania Courts Often Reconsider Orders Concerning Proper Venue And Jurisdiction.

Courts in Pennsylvania have the inherent power to reconsider their rulings. *See, e.g., Moore v. Moore*, 634 A.2d 163, 167 (Pa. 1993); *Hutchison v. Luddy*, 611 A.2d 1280, 1288 (Pa. Super. Ct. 1992) ("Where an order does not effectively place the litigant out of court or end the lawsuit, it is within the trial court's discretion to entertain a motion to reconsider the interlocutory order outside the thirty day time limit set forth in 42 Pa. C.S.A. § 5505."); *see also* 42 Pa.C.S.A. § 5505 (2009) (permitting a trial court to reconsider its own orders within thirty days of entering the order). Pennsylvania courts can and do reconsider their rulings even when there is no "significant change in the law or the facts." *See Wood v. E.I. du Pont de Nemours & Co.*, 829 A.2d 707, 710-11 (Pa. Super. Ct. 2003) (affirming trial court's decision to reconsider an order denying a motion to change venue). Here, GEHC has demonstrated that this case has no connection to the Pennsylvania. *First*, it is undisputed that Ms. Clark's entire medical course – including administration of the alleged drugs at issue – took place outside of Pennsylvania. *Second*, there is no credible suggestion that any corporate conduct on behalf of any of the defendants relevant to the issues in this case occurred in Pennsylvania. Rather, the uncontested affidavit filed in this matter establishes Bayer Corporation had no involvement in the design, manufacturing, or marketing of Magnevist. *Lastly*, plaintiffs' simultaneous prosecution in Illinois of an identical claim and decision not to include Bayer Corporation reflects a notable change in the posture of this case, further supporting Bayer Corporation's lack of involvement and warranting dismissal of this action so that it can be re-filed in a state with an interest in the litigation.

* * * * *

For the foregoing reasons, GEHC respectfully asks that the Court reconsider and reverse its February 10, 2010 Order and dismiss this case for *forum non conveniens* so that it can be re-filed in Maryland, Virginia, the District of Columbia, or ultimately transferred to the federal MDL in Ohio.

Dated: March 12, 2010

DLA PIPER LLP (US)

Raymond M. Williams
One Liberty Place
1650 Market Street, Suite 4900
Philadelphia, PA 19103
(215) 656-3300
(215) 656-3301 *(fax)*

Attorney for Defendants General Electric Company and GE Healthcare Inc.

CERTIFICATE OF SERVICE

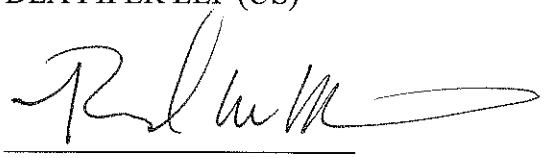
I hereby certify that a true and correct copy of attached Motion for Reconsideration was served on this date, via first class and/or electronic mail, upon the following:

LOPEZ MCHUGH, LLP
James J. McHugh, Jr. ID. 65809
Carrie R. Capouellez ID. 91578
1123 Admiral Peary Way, Quarters K
Philadelphia, PA 19112
Telephone: (215) 952-6910
Facsimile: (215) 952-6914
jmchugh@lopezmchugh.com
ccapouellez@lopezmchugh.com
Attorneys for Plaintiffs

Albert G. Bixler, Esquire
abixler@ackerseamans.com
Rachel Castillo Rosser, Esquire
rrosser@eckertseamans.com
Eckert Seamans Cherin & Mellot, LLC
Two Liberty Place
50 S. 16th Street, 22nd Floor
Philadelphia, PA 19102
Attorneys for Defendant Bayer Corporation, Bayer Healthcare Pharmaceuticals, Inc. and Bayer Schering Pharma AG, and Bayer AG

Dated: March 12, 2010

DLA PIPER LLP (US)



Raymond M. Williams

Attorney for Defendants General Electric Company and GE Healthcare Inc.

EXHIBIT 1

ECKERT SEAMANS CHERIN & MELLOTT, LLC
By: CHARLES F. FORER
ALBERT G. BIXLER
RACHEL CASTILLO ROSSER
Attorney I.D. Nos. 32661, 45639, 82691
Two Liberty Place
50 South 16th Street, 22nd Floor
Philadelphia, PA 19102
(215) 851-8400

Attorneys for Bayer Corporation and Bayer HealthCare Pharmaceuticals Inc.

JANICE AND JAMES CLARK, Plaintiffs, v. GENERAL ELECTRIC COMPANY; GE HEALTHCARE INC.; GE HEALTHCARE AS; BAYER CORPORATION; BAYER HEALTHCARE PHARMACEUTICALS INC.; and BAYER SCHERING PHARMA AG; Defendants.	COURT OF COMMON PLEAS PHILADELPHIA COUNTY JUNE TERM, 2008 NO. 01067 JURY TRIAL DEMANDED

AFFIDAVIT OF ALBERT G. BIXLER, ESQUIRE

Albert G. Bixler, Esquire, being duly sworn, hereby deposes and says as follows:

1. I am an attorney admitted to practice in the Commonwealth of Pennsylvania and I represent the defendants, Bayer Corporation and Bayer HealthCare Pharmaceuticals Inc., in the above-caption lawsuit pending in the Philadelphia Court of Common Pleas.

2. Bayer Corporation is an Indiana corporation with its principal place of business located near Pittsburgh, Pennsylvania.

3. Bayer Corporation plays no role in the design, manufacturing or marketing of Magnevist®.

4. Bayer HealthCare Pharmaceuticals Inc., f/k/a Berlex, Inc., f/k/a Berlex Laboratories, Inc., is a Delaware corporation with its principal place of business located in Wayne, New Jersey.

5. There are no relevant company witnesses from Bayer HealthCare Pharmaceuticals Inc. located in Pennsylvania.

6. Magnevist® is manufactured by Bayer Schering Pharma AG, located in Germany.

Albert G. Bixler

Sworn to and subscribed before me
this 21 day of December, 2009

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
NANCY C. DOUCETTE, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 2, 2013

EXHIBIT 2

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

RANDY McCALLUM and GWENDOLYN McCALLUM, his spouse, ADAM BLOWEY, JANICE CLARK, and JAMES CLARK, her spouse, WILLIAM COLLINS and DOLLY COLLINS, his spouse, ANTOINETTE DAVIS and ELHAJJ DAVIS, her spouse RUBY DIXON, ALFRED DUFF, KATHY STOCKMAN, as Administratrix of the Estate of STEPHEN KIRCHER, Deceased, REBECCA LACY, SANDRA LAWRENCE, CHELSEA LEONARD, MICHAEL NOENNIG, and LUCY NOENNIG, his spouse, CYNTHIA PAIGE and MICHAEL PAIGE, spouses, DEAN POSPISIEL, KATHERINE RODGERS, SHARITA SWAN as Personal Representative to JO ANN SWANN, Deceased, IRISH WHITTED, and ANTHONY WHITTED, her spouse, FLOYD WINSLOW, and NANCY WINSLOW, his spouse,

Plaintiffs,

v.

GENERAL ELECTRIC COMPANY, GE HEALTHCARE, INC. f/k/a AMERSHAM, PLC, AMERSHAM HEALTH AS, AMERSHAM HEALTH, INC., GE HEALTHCARE AS, TYCO HEALTHCARE GROUP, L.P., COVIDIEN, INC., MALLINCKRODT, INC., and JOHN/JANE/CORPORATE DOES 1-20,

Defendants.

Case No. 08 - L - 394

FIRST AMENDED COMPLAINT
JURY TRIAL REQUESTED

Plaintiffs, by and through their attorneys, for their Complaint and Jury Demand against each and every defendant, state, aver, and allege as follows:

BACKGROUND

1. This is an action for damages suffered by plaintiffs as a direct and proximate result of the defendants' and/or their corporate predecessors' negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling, and/or sale of Omniscan™ and OptiMARK, which are injectible paramagnetic contrast agents for magnetic resonance imaging and angiography.

PARTIES

2. Plaintiff Randy McCallum is an adult resident citizen of East St. Louis, St. Clair County, Illinois.

3. Plaintiff Gwendolyn McCallum is an adult resident citizen of East St. Louis, Illinois and is the spouse of Plaintiff Randy McCallum.

4. Plaintiff Adam Blowey is an adult resident citizen of Fort Collins, Colorado.

5. Plaintiff Janice Clark is an adult resident citizen of Virginia.

6. Plaintiff James Clark is an adult resident citizen of Virginia, and the spouse of Plaintiff Janice Clark.

7. Plaintiff William Collins is an adult resident citizen of Burlington, Massachusetts.

8. Plaintiff, Dolly Collins, is an adult resident citizen of Burlington, Massachusetts and is the spouse of Plaintiff William Collins.

9. Plaintiff Antoinette Davis is an adult resident citizen of Freehold, New Jersey.

10. Plaintiff Elhajj Davis is an adult resident citizen of Freehold, New Jersey, and is the spouse of Plaintiff Annette Davis.

11. Plaintiff Ruby Dixon is an adult resident citizen of Alexander City, Alabama.

12. Plaintiff Alfred Duff is an adult resident citizen of Virginia.

13. Plaintiff Kathy Stockman as Administratrix for the Estate of Stephen Kircher, Deceased, and both were, at all times relevant hereto, resident citizens of Cabot, Arkansas.

14. Plaintiff Rebecca Lacy is an adult resident citizen of Bremerton, Washington.

15. Plaintiff Sandra Lawrence is an adult resident citizen of Lexington, Kentucky.

16. Plaintiff Chelsea Leonard is an adult resident citizen of Alexander City, Alabama.

17. Plaintiff Michael Noennig is an adult resident citizen of Wisconsin.

18. Plaintiff Lucy Noennig is an adult resident citizen of Wisconsin and is the spouse of Plaintiff Michael Noenning.

19. Plaintiff Cynthia Paige is an adult resident citizen of Virginia and is the spouse of Plaintiff Michael Page.

20. Plaintiff Michael Paige is an adult resident citizen of Virginia and is the spouse of Plaintiff Cynthia Page.

21. Plaintiff Dean Pospisiel is an adult resident citizen of Black River Falls, Wisconsin.

22. Plaintiff Katherine Rodgers is an adult resident citizen of Pittsboro, North Carolina.

23. Plaintiff Sharita Swann is the Personal Representative for Plaintiff Jo Ann Swann, Deceased, and both were, at all relevant times hereto, adult resident citizens of Chapel Hill, North Carolina.

24. Plaintiff Irish Whitted is an adult resident citizen of Clayton, North Carolina.

25. Plaintiff Anthony Whitted is an adult resident citizen of Clayton, North Carolina, and the spouse of Plaintiff Irish Whitted.

26. Plaintiff, Floyd Winslow, is an adult resident citizen of St. Joseph, Michigan.

27. Plaintiff Nancy Winslow is an adult resident citizen of St. Joseph, Michigan, and the spouse of Plaintiff Floyd Winslow.

28. Defendant, General Electric Company, is a New York corporation. General Electric Company may be served with process by service upon an officer of the corporation at its principle place of business and domicile address of 3135 Easton Turnpike, Fairfield, Connecticut 06431. General Electric Company is the parent company of defendant, GE Healthcare AS and GE Healthcare, Inc.

29. Defendant, GE Healthcare AS, is a Norwegian corporation with its principal place of business in the Kingdom of Norway. Defendant, GE Healthcare AS, is a subsidiary of General Electric Company.

30. Defendant, GE Healthcare, Inc., is a Delaware corporation, with its principal place of business at 101 Carnegie Center, Princeton, New Jersey. Defendant, GE Healthcare, Inc., is domiciled in both Delaware and New Jersey. Defendant, GE Healthcare, Inc., is a subsidiary of General Electric Company. GE Healthcare, Inc. may be served with process on an officer of the corporation at its principal place of business at 101 Carnegie Center, Princeton, New Jersey.

31. In 1997, Amersham International, PLC was acquired by Nycomed and the new company was named Amersham PLC, which held the rights to Omniscan.

32. In 2004, General Electric Company acquired Amersham PLC and the rights to Omniscan. At the time of the acquisition, Amerisham PLC was the parent company of

Amersham Health AS, which manufactured the Omniscan that was distributed and sold in the United States and Amersham Health, Inc., which distributed and sold Omniscan in the United States. In 2006, Amersham Health AS was renamed GE Healthcare AS, and Amersham Health, Inc. was renamed GE Healthcare, Inc.

33. At all times, defendants, General Electric Company and/or GE Healthcare, Inc., and/or its corporate predecessors were engaged in the business of designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing into interstate commerce, either directly or indirectly through third parties or related entities, the gadolinium based contrast agent, Omniscan™.

34. Defendant, Tyco Healthcare Group, LP is a Delaware limited partnership and a wholly owned subsidiary of Tyco International, Inc., Tyco Healthcare Group, LP has its principal place of business at 9 Roszel Road, Princeton, New Jersey. Defendant, Tyco Healthcare Group, L.P. was at all times the parent company of Mallinckrodt, Inc. up until July 2, 2007. Defendant, Tyco Healthcare Group, L.P.. may be served with process by service upon an officer of the corporation at 9 Roszel Road, Princeton, New Jersey. Defendant, Tyco Healthcare Group, L.P.. will be referred to in this complaint as "Tyco".

35. Defendant, Covidien, Inc., is a Delaware corporation and wholly owned subsidiary of Tyco International, Inc. Covidien, Inc. has its principal place of business in Princeton, New Jersey. Defendant, Covidien, Inc., is the parent company of Mallinckrodt, Inc. Defendant, Covidien, Inc. may be served with process by service upon an its registered agent, C. T. Corporation System, 208 S. LaSalle Street, Suite 814, Chicago, Illinois 60604. Defendant, Covidien, Inc., will be referred to in this complaint as "Covidien".

36. Defendant, Mallinckrodt, Inc., is a Delaware corporation with its principal place

of business at 675 McDonnell Boulevard, St. Louis, Missouri. Defendant, Mallinckrodt, Inc. may be served with process by service upon its registered agent, C. T. Corporation System, 208 S. LaSalle Street, Suite 814, Chicago, Illinois 60604. Defendant, Mallinckrodt, Inc. will be referred to in this complaint as "Mallinckrodt".

37. At all times relevant, Tyco, Covidien, and Mallinckrodt were engaged in the business of formulating, compounding, designing, licensing, manufacturing, distributing, selling, testing, marketing, and/or introducing into interstate commerce, including the State of Texas, either directly or indirectly through third parties or related entities, the gadolinium based diagnostic contrast agent known as OptiMARK.

38. Jane/John/Corporate Does 1 – 20, inclusive, were and are providers, distributors, and/or manufacturers of the gadolinium based products listed in this action, or in some way placed said products into the stream of commerce relative to the defective and unsafe gadolinium-based contrast agents which proximately caused or substantially contributed to plaintiffs' injuries.

JURISDICTION AND VENUE

39. Consistent with the Due Process Clause of the Fifth and Fourteenth Amendments, this Court has in personam jurisdiction over the defendants, because defendants are present in the State of Illinois such that requiring an appearance does not offend traditional notions of fair play and substantial justice.

40. This Court has personal jurisdiction over the defendants pursuant to, and consistent with Illinois' long-arm statute (735 ILCS 5/2-209) and the Constitutional requirements of Due Process in that the defendants acting through their agents or apparent agents, committed one or more of the following:

a. Defendants transacted business in the State of Illinois, 735 ILCS 5/2-209(a)(1);

b. Defendants owned, used or possessed real estate situated in the State of Illinois, 735 ILCS 5/2-209(a)(3);

c. Defendants made or performed a contract or promise substantially connected within this state, 735 ILCS 5/2-209(a)(7);

d. Defendants do business in and within Illinois, 735 ILCS 5/2-209(b)(4); and

e. Requiring defendants to litigate this claim in Illinois does not offend traditional notions of fair play and substantial justice and is permitted by the United States Constitution.

41. Defendants marketed, promoted and sold the products concerned in this litigation throughout the United States, including St. Clair County, Illinois. Additionally, the plaintiffs herein suffered injury from the defendants' product in Illinois, more specifically St. Clair County. Accordingly, venue is proper under 735 ILCS 5/1-108 and 2-101 of the Illinois Code of Civil Procedure.

GENERAL ALLEGATIONS

OMNISCAN™

42. Omniscan™ is an injectable paramagnetic contrast agent for MRA and MRI. It contains the metal gadolinium which is highly toxic in its free state. Omniscan™, the chemical name of which is gadolinium diethylenetriamine pentaacetic acide bismethethylamide (gadodiamide), and was represented by defendants, General Electric Company and/or GE Healthcare, Inc. and/or their corporate predecessors to be safely and effectively indicated for intravenous administration to facilitate the visualization of lesions with abnormal vascularity.

43. Omniscan™ was originally developed in the 1990s by Salutar, Inc. The rights to Omniscan™ were subsequently acquired by Sterling Winthrop, a subsdiary of Eastman Kodak Company.

44. In 1994, the diagnostic imaging division of Sterling Winthrop, which held the rights to Omniscan™ was sold to Hafslund Nycomed AS, a Norwegian company.

45. In 1997, Nycomed merged with Amersham International, a British company, and the resulting entity that held the rights to Omniscan™ was Amersham, PLC.

46. In January, 2004, defendant, General Electric Company purchased Amersham, PLC, combined it with its own GE Medical Systems, and created a new subsidiary known as GE Healthcare, Inc.

OPTIMARK

47. OptiMARK is an injectible paramagnetic contrast agent used for magnetic resonance imaging and arteriography. It contains the metal gadolinium which is highly toxic in its free state. OptiMARK, the chemical name of which is gadolinium diethylenetriamine pentaacetic acid bismethoxyethylamide (also known as gadoversetamide), is represented by Tyco, Covidien, and Mallinckrodt to be safe and effective for intravenous administration to facilitate the visualization of lesions with abnormal vascularity in the body.

OMNISCAN AND OPTIMARK

48. At all times relevant to this action, defendants knew or should have known that in its free state and as injected into patients, gadolinium is highly toxic, harmful, and dangerous to humans, and causes severe injury. Defendants knew or should have known of the need to prevent the gadolinium contained in their products from becoming free in the body of humans injected with Omniscan and/or OptiMARK through the use of, among other things, proper

design, testing, and manufacturing.

49. The linear, non-ionic chemical composition of Omniscan and OptiMARK make it easier for the toxic gadolinium to become free in the bodies of persons injected with these contrast agents.

50. At all relevant times, the defendants knew or should have know that there were safer, alternative designs for paramagnetic contrast agents, including non linear designs or cyclical designs, that would prevent or minimize the risk of gadolinium becoming free in the bodies of humans. The defendants knew or should have known that there existed safer, alternative designs for imaging systems that do not use gadolinium based contrast agents which would provide a safer imaging alternative for the public, including plaintiffs.

51. At all times relevant to this action, the defendants knew or should have known that Omniscan and OptiMARK were not reasonably fit, suitable or safe for their intended purpose and specifically, that their products were defective and unsafe for use in patients with renal insufficiency such as plaintiffs, and knew or should have known that the gadolinium contained in their products is highly toxic to humans, and knew or should have known about the significant health risk of administering Omniscan and/or OptiMARK to patients with renal insufficiency, including, but not limited to, the risk of toxic gadolinium being released into the bodies of those patients, causing severe physical injury.

FACTS

RANDY McCALLUM

52. Plaintiff, Randy McCallum, was injected with gadolinium based contrast agent, Omniscan™ and/or OptiMARK, at Barnes-Jewish Hospital in St. Louis, Missouri, prior to magnetic resonance imaging (hereinafter "MRI") of the abdomen on April 7, 2004.

53. Plaintiff, Randy McCallum, was also injected with the gadolinium based contrast agent, Omniscan™ and/or OptiMARK, at Barnes-Jewish Hospital in St. Louis, Missouri, prior to magnetic resonance angiography (hereinafter "MRA") and magnetic resonance venography (hereinafter "MRV") of the pelvis on April 14, 2006.

54. After being administered Omniscan™ and/or OptiMARK, gadolinium was released into his body, and plaintiff, Randy McCallum, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"), Plaintiff was diagnosed with NFD/NSF on August 7, 2006.

ADAM BLOWEY

55. Plaintiff, Adam Blowey, was injected with gadolinium based contrast agent, Omniscan™ at Poudre Valley Hospital in Fort Collins, Colorado, prior to magnetic resonance imaging MRI of the brain on February 11, 2006.

56. After being administered Omniscan™, gadolinium was released into his body, and plaintiff, Adam Blowey, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF in October of 2008.

JANICE CLARK

57. Plaintiff, Janice Clark, was injected with gadolinium based contrast agent, Magnevist, at Kaiser Permanente in Fairfax, Virginia, prior to MRI of the cervical spine on April 23, 2002.

58. Plaintiff, Janice Clark, was also injected with the gadolinium based contrast agent, Magnevist, at Kaiser Permanente in Fairfax, Virginia prior to MRI of the lumbar spine on April 23, 2002.

59. Plaintiff, Janice Clark, was also injected with the gadolinium based contrast agent, Omniscan™, at Washington Hospital Center in Washington, D.C. prior to MRI of the cervical spine on August 20, 2004.

60. After being administered Magnevist and Omniscan™, gadolinium was released into her body, and plaintiff, Janice Clark, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on October 29, 2004.

WILLIAM COLLINS

61. Plaintiff, William Collins, was injected with gadolinium based contrast agent, Omniscan™ at the Lahey Clinic Medical Center in Burlington, Massachusetts, prior to MRI of the abdomen on June 15, 2005.

62. Plaintiff, William Collins, was also injected with the gadolinium based contrast agent, Omniscan™, at the Lahey Clinic Medical Center in Burlington, Massachusetts, prior to MRI of the brain on January 2, 2007.

63. Plaintiff, William Collins, was also injected with the gadolinium based contrast agent, Omniscan™, at the Lahey Clinic Medical Center in Burlington, Massachusetts, prior to MRI of the brain on February 11, 2007.

64. After being administered Omniscan™, gadolinium was released into his body, and plaintiff, William Collins, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on December 5, 2007.

ANTOINETTE DAVIS

65. Plaintiff, Antoinette Davis, was injected with the gadolinium based contrast agent, Omniscan™ and/or OptiMARK, at CentraState Medical Center in Freehold, New Jersey, prior to magnetic resonance imaging (hereinafter "MRI") on August 2, 2006 and again at Robert Wood Johnson Hospital, New Brunswick, New Jersey,on August 5, 2006 .

66. After being administered Omniscan™ and/or OptiMARK, gadolinium was released into her body, and plaintiff, Antoinette Davis, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"), Plaintiff was diagnosed with NFD/NSF on July 7, 2007.

RUBY DIXON

67. Plaintiff, Ruby Dixon, was injected with gadolinium based contrast agent, Omniscan™ at the Russell Medical Center in Alexander City, Alabama, prior to MRI and MRA of the abdomen on December 29, 2005.

68. Plaintiff, Ruby Dixon, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of Alabama Health System in Birmingham, Alabama, prior to MRA of the abdomen on January 23, 2006.

69. Plaintiff, Ruby Dixon, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of Alabama Health System in Birmingham, Alabama, prior to MRI of the abdomen on March 7, 2006.

70. After being administered Omniscan™, gadolinium was released into her body, and plaintiff, Ruby Dixon, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on April 7, 2006.

ALFRED DUFF

71. Plaintiff, Alfred Duff, was injected with gadolinium based contrast agent, Magnevist, at University of Virginia Health System in Charlottesville, Virginia, prior to cardiac MRI on August 22, 2006.

72. After being administered Magnevist, gadolinium was released into his body, and plaintiff, Alfred Duff, suffered severe physical injury.

STEPHEN KIRCHER, Deceased,

73. Plaintiff, Stephen Kircher, was injected with gadolinium based contrast agent, Omniscan™ at the White County Medical Center in Searcy, Arkansas, prior to MRI and MRI of the brain on November 14, 2006.

74. Plaintiff, Stephen Kircher, was also injected with the gadolinium based contrast agent, Omniscan™, at the White County Medical Center in Searcy, Arkansas, prior to MRI of the brain on November 20, 2006.

75. Plaintiff, Stephen Kircher, was also injected with the gadolinium based contrast agent, Omniscan™, at the White County Medical Center in Searcy, Arkansas, prior to MRI of the brain on December 6, 2006.

76. After being administered Omniscan™, gadolinium was released into his body, and plaintiff, Stephen Kircher, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF in September 21, 2007.

77. Stephen Kircher passed away on July 3, 2008. His estate is represented by Kathy Stockman.

REBECCA LACY

78. Plaintiff, Rebecca Lacy, was injected with gadolinium based contrast agent, OptiMARK at the Harrison Medical Center in Bremerton, Washington, prior to MRI of the brain on February 14, 2004.

79. Plaintiff, Rebecca Lacy, was also injected with the gadolinium based contrast agent, OptiMARK, at the Harrison Medical Center in Bremerton, Washington, prior to MRA of the carotid arteries on February 20, 2004.

80. Plaintiff, Rebecca Lacy, was also injected with the gadolinium based contrast agent, OptiMARK at the Harrison Medical Center in Bremerton, Washington, prior to MRI on September 22, 2006.

81. Plaintiff, Rebecca Lacy, was also injected with the gadolinium based contrast agent, OptiMARK at the Harrison Medical Center in Bremerton, Washington, prior to MRI on November 12, 2006.

82. After being administered OptiMARK, gadolinium was released into her body, and plaintiff, Rebecca Lacy, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on July 15, 2008.

SANDRA LAWRENCE

83. Plaintiff, Sandra Lawrence, was injected with gadolinium based contrast agent, Omniscan™ and/or OptiMARK, at the University of Kentucky Hospital in Louisville, KY, prior to magnetic resonance imaging (hereinafter "MRI") of the head on September 27, 2005, and February 1, 2006.

84. After being administered Omniscan™ and/or OptiMARK, gadolinium was released into her body, and plaintiff, Sandra Lawrence, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"), Plaintiff was diagnosed with NFD/NSF on June 19, 2006.

CHELSEA LEONARD

85. Plaintiff, Chelsea Leonard, was injected with gadolinium based contrast agent, Omniscan™, at Central Alabama MRI, LLC in Alexander City, Alabama, prior to MRA of the lower extremities on February 7, 2006.

86. After being administered Omniscan™, gadolinium was released into her body, and plaintiff, Chelsea Leonard, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on January 1, 2008.

MICHAEL NOENNIG

87. Plaintiff, Michael Noennig, was injected with the gadolinium based contrast agent, Omniscan™ and/or OptiMARK, at University of Wisconsin Hospital & Clinics located at 600 Highland Ave., Madison, WI 53792, prior to magnetic resonance angiography (hereinafter "MRA") and magnetic resonance venography (hereinafter "MRV") between February 15, 2004 and March 7, 2005.

88. Plaintiff, Michael Noennig, was also injected with the gadolinium based contrast agent, Omniscan™ and/or OptiMARK, at a VA Medical Center located at Zablocki V.A. Medical Center, 5000 West National Avenue, Milwaukee, WI 53295, prior to magnetic resonance angiography (hereinafter "MRA") and magnetic resonance venography (hereinafter "MRV") on September 8, 2005.

89. After being administered Omniscan™ and/or OptiMARK, gadolinium was released into his body, and Plaintiff, Michael Noennig, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"), Plaintiff was diagnosed with NFD/NSF on February 5, 2008.

CYNTHIA PAIGE

90. Plaintiff, Cynthia Paige, was injected with gadolinium based contrast agent, Magnevist, at University of Virginia Health System in Charlottesville, Virginia, prior to cardiac MRI on August 22, 2006.

91. After being administered Magnevist, gadolinium was released into her body, and plaintiff, Cynthia Paige, suffered severe physical injury.

MICHAEL PAIGE

92. Plaintiff, Michael Paige, was injected with gadolinium based contrast agent, Magnevist, at University of Virginia Health System in Charlottesville, Virginia, prior to cardiac MRI on August 22, 2006.

93. After being administered Magnevist, gadolinium was released into his body, and plaintiff, Michael Paige, suffered severe physical injury.

DEAN POSPISIEL

94. Plaintiff, Dean Pospisiel, was injected with gadolinium based contrast agent, Omniscan™ and/or OptiMARK, at Franciscan Skemp Healthcare in Onalaska, WI, prior to magnetic resonance angiography (hereinafter "MRA") of the abdomen on March 29, 2002, and prior to MRA of the pelvis and lower abdomen on April 12, 2002.

95. After being administered Omniscan™ and/or OptiMARK, gadolinium was released into his body, and plaintiff, Dean Pospisiel, developed Nephronic Fibrosing

Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"), Plaintiff was diagnosed with NFD/NSF on December 2, 2008.

KATHERINE RODGERS

96. Plaintiff, Katherine Rodgers, was injected with gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina prior to MRI of the abdomen on May 3, 2005.

97. Plaintiff, Katherine Rodgers, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of the brain on October 12, 2005.

98. Plaintiff, Katherine Rodgers, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of the brain on December 1, 2005.

99. Plaintiff, Katherine Rodgers, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of brain on March 16, 2006.

100. Plaintiff, Katherine Rodgers, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of the brain on November 23, 2006.

101. After being administered Omniscan™, gadolinium was released into her body, and plaintiff, Katherine Rodgers, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on June 5, 2007.

JO ANN SWANN, Deceased,

102. Plaintiff, Jo Ann Swann, was injected with gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina prior to MRI of the Abdomen on April 29, 2004.

103. Plaintiff, Jo Ann Swann, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of the abdomen on January 12, 2006.

104. Plaintiff, Jo Ann Swann, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of the pelvis on April 25, 2006.

105. Plaintiff, Jo Ann Swann, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of the thoracic spine on April 25, 2006.

106. Plaintiff, Jo Ann Swann, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of the lumbar spine on April 25, 2006.

107. Plaintiff, Jo Ann Swann, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of the abdomen on May 9, 2006.

108. Plaintiff, Jo Ann Swann, was also injected with the gadolinium based contrast agent, Omniscan™, at the University of North Carolina Medical Center at Chapel Hill, North Carolina, prior to MRI of abdomen on August 11, 2006.

109. After being administered Omniscan™, gadolinium was released into her body, and plaintiff, Jo Ann Swann, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on July 6, 2006.

110. Jo Ann Swann passed away on June 25, 2008. Her estate is represented by Sharita Swan.

IRISH WHITTED

111. Plaintiff, Irish Whitted, was injected with gadolinium based contrast agent, Omniscan™ at Sentara Norfolk General Hospital in Norfolk, Virginia, prior to MRI of the lower extremity on December 13, 2006.

112. After being administered Omniscan™, gadolinium was released into her body, and plaintiff, Irish Whitted, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on August 31, 2007.

FLOYD WINSLOW

113. Plaintiff, Floyd Winslow, was injected with gadolinium based contrast agent, Omniscan™ at Lakeland Regional Medical Center in St. Joseph, Michigan, prior to MRA of the abdomen on September 16, 2005.

114. After being administered Omniscan™, gadolinium was released into his body, and plaintiff, Floyd Winslow, developed Nephronic Fibrosing Dermopathy (hereinafter "NFD") also known as Nephrogenic Systemic Fibrosis (hereinafter "NSF"). Plaintiff was diagnosed with NFD/NSF on July 31, 2006.

115. NFD/NSF develops only in patients with renal insufficiency, such as plaintiffs, who were given an injection of a gadolinium-type contrast agent such as Omniscan™ and/or OptiMARK.

116. NFD/NSF is predominantly characterized by discoloration, thickening, tightening, and swelling of the skin which occurs after receiving a gadolinium based contrast agent such as Omniscan™ and/or OptiMARK. These fibrotic and edematous changes produce muscular weakness and inhibit flexion and extension of joints, resulting in contractures. NFD/NSF often progresses to painful inhibition of the ability to use the arms, legs, hands, feet, and other joints. The skin changes that begin as darkened patches or plaques progress to a "woody" texture and are accompanied by burning, itching, and severe pain in the areas of involvement. NFD/NSF also progresses to a fibrotic or scarring condition of other body organs such as the lungs, heart, liver, and musculature, which can inhibit their ability to function properly and may lead to death. NFD/NSF is a progressive disease for which there is no known cure.

117. Plaintiffs' NFD/NSF progressed to fibrosis and contractures in areas including, but not limited to, hands, feet, arms, legs, and associated joints.

118. As a direct and proximate result of being injected with Omniscan™ and/or OptiMARK, plaintiffs suffered serious, progressive, permanent, and incurable, injuries.

119. As a direct and proximate result of plaintiffs, being injected with Omniscan™ and/or OptiMARK, they have and continue to suffer significant harm, conscious pain and suffering, physical injury, bodily impairment, disfigurement and scarring, including, but not limited to, suffering from NFD/NSF, which has caused permanent injury and effects. Plaintiffs further suffer significant mental anguish and emotional distress. Plaintiffs have incurred and

continue to incur medical expenses and other economic harm, as a direct and proximate result of being administered Omniscan™ and/or OptiMARK.

COUNT I

Misrepresentation and Fraudulent Concealment

120. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

121. Defendants knowingly and intentionally made material and false and misleading representations through their written literature and through their sales representatives to plaintiffs, their physicians, the U. S. Food and Drug Administration (hereinafter "FDA") and to the public that Omniscan™ and OptiMARK were safe for use and that defendants' labeling, marketing, and promotion fully described all known risks of the products.

122. The defendants representations were in fact false, as Omniscan™ and OptiMARK are safe for use, and their labeling, marketing, and promotion did not and do not fully describe all known risks of the products.

123. The defendants had actual knowledge based upon studies, published reports, unpublished reports and clinical experience that their products, Omniscan™ and OptiMARK, created an unreasonable risk of serious bodily injury and death to consumers, and, in particular, consumers with impaired kidney function, or should have known such information.

124. The defendants knowingly and intentionally omitted this information in their product labeling, marketing, and promotion, and instead, labeled, promoted and marketed their products as safe for use in order to avoid monetary losses and in order to sustain profits in their sales to consumers.

125. When the defendants made these representations that Omniscan™ and OptiMARK were safe for use, they knowingly and intentionally concealed and withheld from plaintiffs, their physicians, the FDA, and the public the true facts that Omniscan™ and OptiMARK were and are not safe, nor adequately tested, for use in consumers with renal insufficiency.

126. The defendants had a duty to disclose to plaintiffs, their physicians, the FDA, and the public that Omniscan™ and OptiMARK were not safe or adequately tested for use in patients with renal insufficiency in that it causes NFD/NSF, because defendants had superior knowledge of these facts that were material to plaintiff, his physicians, and the FDA's decision to use and/or improve Omniscan™ and OptiMARK.

127. Plaintiffs, their physicians, and the FDA reasonably and justifiably relied on defendants' concealment of the true facts and reasonably and justifiably relied upon the defendants' representations to plaintiffs, and/or their physicians, and the FDA, that Omniscan™ and OptiMARK were safe for human consumption and/or use and that the defendants' labeling, marketing, and promotion fully described all known risks of the product.

128. Had plaintiffs and their physicians known of the defendants' concealment of the true facts that Omniscan™ and OptiMARK were not safe for human use, plaintiffs would not have been administered Omniscan™ and/or OptiMARK.

129. As a direct and proximate result of the defendants' misrepresentations and concealment, plaintiffs were administered Omniscan™ and OptiMARK and have suffered and continues to suffer economic damages, losses and expenses and non-economic damages and losses, including, but not limited to, substantial pain and suffering, impairment of quality of life, and emotional distress.

COUNT II

Strict Product Liability – Defective Manufacturing

130. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows:

131. At all times material to this action, the defendants and/or their corporate predecessors were responsible for designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling of Omniscan™ and OptiMARK.

132. At all times material to this action, Omniscan™ and OptiMARK, were expected to reach, and did reach, consumers in the State of Illinois and throughout the United States, including plaintiffs, without substantial change in the condition in which it was sold.

133. At all times material to this action, Omniscan™ and OptiMARK were designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by defendants and/or their corporate predecessors in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce in ways which include, but are not limited to, one or more of the following particulars:

a. When placed in the stream of commerce, Omniscan™ and OptiMARK, contained manufacturing defects which rendered the products unreasonably dangerous;

b. The subject products' manufacturing defects occurred while the products were in the possession and control of the defendants and/or their corporate predecessors;

c. The subject products were not made in accordance with the defendants' and/or their corporate predecessors' specifications or performance standards;

d. The subject products' manufacturing defects existed before it left the control of the defendants.

134. As a direct and proximate result of the subject products' manufacturing defects, plaintiffs suffered severe and permanent physical injuries. Plaintiffs have endured substantial pain and suffering. They have incurred significant expenses for medical care and treatment. Plaintiffs have suffered and continue to suffer economic loss, and have otherwise been physically, emotionally and economically injured. Plaintiffs' injuries and damages are permanent. Plaintiffs seek actual and punitive damages from the defendants as alleged herein.

COUNT III

Strict Products Liability – Design Defect

135. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows:

136. At all times material to this action, the defendants and/or their corporate predecessors were responsible for designing, developing, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, and/or selling Omniscan™ and OptiMARK.

137. The subject products were defective and unreasonably dangerous to consumers.

138. Omniscan™ and OptiMARK are defective in their design or formulation in that they are not reasonably fit, suitable, or safe for their intended purpose and/or their foreseeable risks exceed the benefits associated with their design and formulation.

139. At all times material to this action, Omniscan™ and OptiMARK were expected to reach, and did reach, consumers throughout the United States, including plaintiffs without substantial change in the condition in which it was sold.

140. At all times material to this action, Omniscan™ and OptiMARK were designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled, and/or sold by defendants and/or their corporate predecessors in a defective and unreasonably dangerous

condition at the time it was placed in the stream of commerce in ways which include, but are not limited to, one or more of the following particulars:

a. When placed in the stream of commerce, Omniscan™ and OptiMARK contained unreasonably dangerous design defects and were not reasonably safe as intended to be used, subjecting plaintiffs to risks that exceeded the benefits of the subject products, including, but not limited to, the risks of exposure to free gadolinium and the development of NFD/NSF.

b. When placed in the stream of commerce, Omniscan™ and OptiMARK were defective in design and formulation, making the use of Omniscan™ and OptiMARK more dangerous than an ordinary consumer would expect, and more dangerous than the risks associated with the other contrast agents or non-contrast imaging systems on the market;

c. The subject products' design defects existed before it left the control of the defendants and/or their corporate predecessors;

d. Omniscan™ and OptiMARK were insufficiently tested;

e. Omniscan™ and OptiMARK caused harmful side effects that outweighed any potential utility; and

f. Omniscan™ and OptiMARK were not accompanied by adequate instructions and/or warnings to fully apprise consumers, including plaintiffs of the full nature and extent of the risks and side effects associated with their use, thereby rendering defendants liable to plaintiffs, individually and collectively.

141. In addition, at the time the subject products left the control of the defendants and/or their corporate successors, there were practical and feasible alternative designs that would

have prevented and/or significantly reduced the risk of plaintiffs' injuries without impairing the reasonably anticipated or intended function of the products. These safer alternative designs were economically and technologically feasible, and would have prevented or significantly reduced the risk of plaintiffs' injuries without substantially impairing the products' utility.

142. As a direct and proximate result of the subject products' defective design, plaintiffs have suffered and continue to suffer severe and permanent physical injuries. Plaintiffs have endured substantial pain and suffering. They have incurred significant expenses for medical care and treatment. Plaintiffs have suffered and continue to suffer economic loss, physical, and emotional injuries. Plaintiffs seek actual and positive damages from the defendants as alleged herein.

COUNT IV

Products Liability – Failure to Warn

143. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows:

144. Omniscan™ and OptiMARK were defective and unreasonably dangerous when they left the possession of the defendants and/or their corporate predecessors in that they contained warnings insufficient to alert customers, including plaintiffs, of the dangerous risks of exposure to free gadolinium and reactions associated with free gadolinium and the subject products, notwithstanding that the defendants and/or their corporate predecessors knew or should have known that the products were highly toxic and/or contained a highly toxic component (gadolinium) and created significant risks of serious bodily harm and death to humans and not withstanding their knowledge of an increased risk of injuries and side effects over other contrast agents or non-contrast imaging systems.

145. Plaintiffs were administered Omniscan™ and OptiMARK and used the subject products for their intended purpose.

146. Plaintiffs could not have discovered any defect in the subject products through the exercise of reasonable care.

147. The defendants and/or their corporate predecessors, as manufacturers and/or distributors of the subject products, are held to the level of knowledge of an expert in the field.

148. The warnings that were given by the defendants and/or their corporate predecessors were not accurate, clear, and/or were ambiguous.

149. The warnings that were given by the defendants and/or their corporate predecessors failed to properly warn physicians of the increased risks associated with toxic gadolinium exposure and their products.

150. The warnings that were given by the defendants and/or their corporate predecessors failed to properly warn consumers/persons administered Omniscan™ and OptiMARK of the increased risks of toxic gadolinium exposure in their products.

151. Plaintiffs, individually and through their prescribing physicians, reasonably relied upon the skill, superior knowledge, and judgment of the defendants and/or their corporate predecessors.

152. The defendants and/or their corporate predecessors had a continuing duty to warn plaintiffs of the dangers associated with the subject products and the Omniscan™ and OptiMARK manufactured and supplied by defendants and/or their corporate predecessors were further defective due to inadequate post-marketing warning, labeling, or instruction because, after defendants and/or their corporate predecessors knew or should have known of the risk of serious bodily harm and death from the administration of Omniscan™ and OptiMARK,

defendants and/or their corporate predecessors failed to provide an adequate warning to persons such as plaintiff and/or his health care providers of the products, knowing the products could cause serious injury and death.

153. Had plaintiffs received adequate warnings regarding the risks of the subject products, they would not have used them.

154. As a direct and proximate result of the subject products' defective and inappropriate warnings, plaintiffs have suffered and continue to suffer severe and permanent physical injuries. Plaintiffs have endured and continue to endure substantial pain and suffering. They have incurred and continue to incur significant expenses for medical care and treatment. Plaintiffs have suffered and continue to suffer a loss of earning capacity. Plaintiffs have suffered and continue to suffer economic loss, and is physically, emotionally, and economically injured. Plaintiffs seek actual and punitive damages from the defendants as alleged herein.

COUNT V

Breach of Warranty

155. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows:

156. Defendants and/or their corporate predecessors expressly or impliedly warranted that Omniscan™ and OptiMARK were safe and effective paramagnetic contrast agents for magnetic resonance imaging.

157. The Omniscan™ and OptiMARK manufactured and sold by defendants and/or their corporate predecessors did not conform to these express representations because they caused serious injury to persons when administered in recommended dosages.

158. As a direct and proximate result of defendants', and/or their corporate predecessors' breach of warranty, plaintiffs have suffered and continue to suffer severe and permanent physical injuries. Plaintiffs have endured and continue to endure substantial pain and suffering. They incurred and continue to incur significant expenses for their medical care and treatment. Plaintiffs have suffered and continue to suffer economic loss, physical, emotional, and economical injuries. Plaintiffs seek actual and punitive damages from the defendants as alleged herein.

COUNT VI

Negligence

159. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows:

160. At all material times, defendants had a duty to exercise reasonable care in all aspects of the testing, labeling, marketing, sale and provision of adequate warnings regarding the use of Omniscan™ and OptiMARK to ensure the safety of the product and to ensure that the consuming public, including plaintiffs and their physicians, obtained accurate information and instructions for the safe use of Omniscan™ and OptiMARK.

161. At all material times, defendants knew, or in the exercise of reasonable care should have known, that Omniscan™ and OptiMARK could cause injury to patients, such as plaintiffs, if they were not properly tested, labeled, distributed, marketed, sold and warned about.

162. Each of the following acts and omissions herein alleged were negligently performed or omitted by defendants, resulting in a breach of the duties set forth above. These acts and omissions include, but are not restricted to, negligent research of Omniscan™ and OptiMARK, negligent testing of Omniscan™ and OptiMARK, negligent failure to give adequate

instructions for the safe use of Omniscan™ and OptiMARK and negligent failure to give adequate warnings to the plaintiffs, their physicians, and the public in general of the potentially dangerous, defective, and unsafe propensities of Omniscan™ and OptiMARK and of the risks associated with its use.

163. As a direct and proximate result of the negligence of defendants, plaintiffs have sustained and continue to suffer from the damages and injuries set forth above.

COUNT VII

Breach of Implied Warranty of Merchantability by Defendant

164. Plaintiffs incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

165. Defendants impliedly warranted to prospective purchasers and users, including the Plaintiffs, that Omniscan™ and OptiMARK were safe, merchantable, and fit for the ordinary purposes for which such goods are used.

166. Defendants' breach of said implied warranties has directly resulted in the plaintiff's damages and injuries set forth above.

COUNT VIII

Negligent Misrepresentation by Defendant

167. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as though fully set forth herein.

168. Defendants falsely represented to plaintiffs and their physicians that Omniscan™ and OptiMARK were safe when used as instructed. These representations, that Omniscan™ and OptiMARK were safe for their intended use when used as instructed and as labeled were false, as

Omniscan™ and OptiMARK was, in fact, dangerous to the health of plaintiffs when used as intended.

169. Defendants failed to exercise reasonable care in ascertaining the accuracy of the information regarding the safe use of Omniscan™ and OptiMARK, and otherwise failed to exercise reasonable care in communicating the information to plaintiffs and their physicians.

170. In reasonable reliance upon defendants' misrepresentations, plaintiffs and their physicians were induced to, and did, use Omniscan™ and OptiMARK.

171. As a direct and proximate result of defendants' misrepresentations, plaintiffs sustained the damages and injuries set forth above.

COUNT IX

SUCCESSOR LIABILITY

172. Some of the defendants herein have acquired other defendants in various corporate mergers, consolidations, name changes, or acquisitions. Plaintiffs assert that any defendant that has acquired or sold all or any part of another defendant is liable for the torts and defective products of the predecessor or successor corporation without regard to any contract that may exist between the various corporations. All defendants are hereby on notice that plaintiffs are claiming that any company that actually manufactured, designed, sold, marketed, dispensed or distributed Omniscan™ and OptiMARK is liable to the plaintiffs and any company that acquired or sold all or any part of a corporation involved with Omniscan™ and OptiMARK are also liable to the plaintiffs.

COUNT X

Punitive Damages

173. Plaintiffs incorporate by reference as if fully set forth herein, every allegation set forth in the preceding paragraphs, and allege as follows:

174. At all times material hereto, defendants and/or their corporate predecessors knew or should have known that the subject products were highly toxic and inherently and unreasonably dangerous to persons with renal insufficiency.

175. At all times material hereto, defendants and/or their corporate predecessors attempted to misrepresent and did misrepresent facts concerning the safety of the subject product.

176. Defendants and/or their corporate predecessors' misrepresentations included knowingly withholding material information from the FDA, the medical community and the public, including plaintiffs, concerning the safety of the subject products.

177. At all times material hereto, defendants and/or their corporate predecessors knew and recklessly disregarded the fact that Omniscan™ and OptiMARK cause debilitating and potentially lethal side effects in patients with renal failure.

178. Notwithstanding the foregoing, defendants and/or their corporate predecessors continued to market the subject products without disclosing the aforesaid side effects when there were safer alternatives.

179. Defendants and/or their corporate predecessors knew of the subject products' defective and unreasonably dangerous nature, as set forth herein, but continued to design, develop, manufacture, market, distribute and sell it so as to maximize sales and profits at the

expense of the health and safety of the public, including plaintiffs, in conscious and/or reckless disregard of the foreseeable harm caused by Omniscan™ and OptiMARK.

180. Defendants' and/or their corporate predecessors' intentional and/or reckless failure to disclose information deprived plaintiffs of necessary information to enable him to weigh the true risks of using the subject products against their benefits.

181. As a direct and proximate result of defendants' and/or their corporate predecessors' conscious and deliberate disregard for the rights and safety of the public, such as plaintiffs, as alleged above, plaintiffs have suffered and continue to suffer severe and permanent physical, mental, and emotional injuries as further alleged herein, and incurred other significant losses and damages, including, but not limited to, non-economic and economic losses, loss of future income, and other out-of-pocket costs.

182. The aforesaid conduct of defendants and/or their corporate predecessors was committed with knowing, conscious, and deliberate disregard for the rights and safety of the public, including plaintiffs, thereby entitling plaintiffs to punitive damages in an amount appropriate to punish defendants and deter them from similar conduct in the future.

COUNT XI

Loss of Consortium

183. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows:

GWENDOLYN McCALLUM

184. Plaintiff Gwendolyn McCallum is the wife/spouse of the injured Plaintiff, Randy McCallum.

185. By reason of the foregoing, Plaintiff Gwendolyn McCallum has necessarily provided care and comfort for Plaintiff, Randy McCallum.

186. By reason of the foregoing, Plaintiff Gwendolyn McCallum further has been caused presently and in the future the loss of her husband's companionship, services, society, and consortium.

JAMES CLARK

187. Plaintiff, James Clark, is the husband/spouse of the injured Plaintiff, Janice Clark.

188. By reason of the foregoing, Plaintiff James Clark has necessarily provided care and comfort for Plaintiff Janice Clark.

189. By reason of the foregoing, Plaintiff James Clark further has been caused presently and in the future the loss of his wife's companionship, services, society, and consortium.

DOLLY COLLINS

190. Plaintiff, Dolly Collins, is the wife/spouse of the injured plaintiff, William Collins.

191. By reason of the foregoing, Plaintiff, Dolly Collins, has necessarily provided care and comfort for Plaintiff, William Collins.

192. By reason of the foregoing, Plaintiff, Dolly Collins, further has been caused presently and in the future the loss of her husband's companionship, services, society, and consortium.

ELHAJJ M. DAVIS

193. Plaintiff, Elhajj M. Davis, is the husband/spouse of the injured Plaintiff, Antoinette Davis.

194. By reason of the foregoing, Plaintiff, Elhajj M. Davis, has necessarily provided care and comfort for plaintiff, Antoinette Davis.

195. By reason of the foregoing, Plaintiff, Elhajj M. Davis, further has been caused presently and in the future the loss of his wife's companionship, services, society, and consortium.

RANDY LACY

196. Plaintiff, Randy Lacy, is the husband/spouse of the injured Plaintiff, Rebecca Lacy.

197. By reason of the foregoing, Plaintiff, Randy Lacy, has necessarily provided care and comfort for plaintiff, Rebecca Lacy.

198. By reason of the foregoing, Plaintiff, Randy Lacy, further has been caused presently and in the future the loss of his wife's companionship, services, society, and consortium.

LUCY NOENNIG

199. Plaintiff, Lucy Noennig, is the wife/spouse of the injured Plaintiff, Michael Noennig.

200. By reason of the foregoing, Plaintiff, Lucy Noenning, has necessarily provided care and comfort for Plaintiff, Michael Noenning.

201. By reason of the foregoing, Plaintiff, Lucy Noenning, further has been caused presently and in the future the loss of her husband's companionship, services, society, and consortium.

CYNTHIA PAIGE

202. Plaintiff Cynthia Paige is the wife/spouse of the injured Plaintiff Michael Paige.

203. By reason of the foregoing, Plaintiff Cynthia Paige, has necessarily provided care and comfort for Plaintiff Michael Paige.

204. By reason of the foregoing, Plaintiff, Cynthia Paige, further has been caused presently and in the future the loss of her husband's companionship, services, society, and consortium.

MICHAEL PAIGE

205. Plaintiff, Michael Paige, is the husband/spouse of the injured Plaintiff Cynthia Paige.

206. By reason of the foregoing, Plaintiff Michael Paige, has necessarily provided care and comfort for Plaintiff Cynthia Paige.

207. By reason of the foregoing, Plaintiff Michael Paige, further has been caused presently and in the future the loss of his wife's companionship, services, society, and consortium.

ANTHONY WHITTED

208. Plaintiff, Anthony Whitted, is the husband/spouse of the injured Plaintiff, Irish Whitted.

209. By reason of the foregoing, Plaintiff, Anthony Whitted, has necessarily provided care and comfort for Plaintiff, Irish Whitted.

210. By reason of the foregoing, Plaintiff, Anthony Whitted, further has been caused presently and in the future the loss of his wife's companionship, services, society, and consortium.

NANCY WINSLOW

211. Plaintiff, Nancy Winslow, is the wife/spouse of the injured Plaintiff, Floyd Winslow.

212. By reason of the foregoing, Plaintiff, Nancy Winslow, has necessarily provided care and comfort for Plaintiff, Floyd Winslow.

213. By reason of the foregoing, Plaintiff, Nancy Winslow, further has been caused presently and in the future the loss of her husband's companionship, services, society, and consortium.

COUNT XII

SURVIVAL AND FAMILY EXPENSES ACT

214. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

215. The Defendants knew or should have known that it was foreseeable that users of their Omniscan™ and/or OptiMARK, such as Plaintiffs' Decedents, would suffer injury or death as a result of Defendants' failure to exercise ordinary care as described in the foregoing.

216. That, as a direct and proximate cause of one or more of the aforementioned negligent acts and/or omissions on behalf of Defendants, Plaintiffs' Decedents sustained injury, incurred medical expenses , suffered from disability, suffered a diminished ability to enjoy life, and experienced pain and suffering until ultimate death.

217. Had Plaintiffs' Decedents survived, they would have been able to bring this cause in their own names.

218. At all times relevant herein, there was in force and effect a statute commonly known as the Survival Act (755 ILCS 5/27-6), and other similar operative state statutes and acts.

219. At all times relevant herein, there was in force and effect a statute commonly

known as the Family Expenses Act (750 ILCS 65/15), and other similar operative state statutes and acts.

WHEREFORE, Plaintiffs and Plaintiffs' Decedents, pray for judgment in their favor and against the Defendants, in an amount in excess of $50,000, plus the cost of this suit, and for any other relief deemed proper.

COUNT XIII

WRONGFUL DEATH

220. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

221. That as a direct and proximate cause of the Defendants' wrongful acts and negligence, Plaintiffs' Decedents died and Plaintiffs were caused to incur funeral and burial expenses.

222. Plaintiffs' Decedents left surviving family and heirs, each of whom has sustained a loss of companionship, society, and/or consortium as a result of the death of Plaintiffs' Decedents.

223. At all relevant times, there was in force and effect a statute commonly known as the Wrongful Death Act (740 ILCS 180/1 *et seq.*), and other similar operative state statutes and acts.

WHEREFORE, Plaintiffs and Plaintiffs' Decedents, pray for judgment in their favor and against the Defendants, in an amount in excess of $50,000, plus the cost of this suit, and for any other relief deemed proper.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment against defendants and relief as follows in amounts to be determined at trial:

1. Compensatory damages in excess of the jurisdictional amount, including, but not limited to pain, suffering, emotional distress, disfigurement, disability, loss of enjoyment of life, loss of companionship, and other non-economic damages in an amount to be determined at the trial of this action;
2. Compensatory damages in excess of the jurisdictional amount, including, but not limited to medical expenses, lost past and future income, loss of enjoyment of life, loss of companionship, and other economic damages in an amount to be determined at trial of this action;
3. Pre and post-judgment interest;
4. Attorneys' fees, expenses, and costs of this action as allowed by law;
5. Punitive/Exemplary damages; and
6. Such further relief as this Court deems necessary, just, and proper.
7.

RESPECTFULLY SUBMITTED, this the 3rd day of April, 2009.

By: _____

John J. Driscoll, # 6276464
211 N. Broadway, Ste. 2440
St. Louis, MO 63102
(314) 932-3232
(314) 932-3233 fax

Christopher Cueto, IL # 06192248
LAW OFFICE OF CHRISTOPHER CUETO, LTD.
7110 West Main Street
Belleville, IL 62223
(618) 277-1554
(618) 277 – 0962 fax

Robert L. Salim
Attorney at Law
1762 Texas Street
P.O. Box 2069
Natchitoches, LA 71457
(318) 354 – 1818

Lloyd M. Cueto, IL #6292629
LAW OFFICE OF LLOYD M. CUETO, P.C.
7110 West Main Street
Belleville, IL 62223
(618) 277-1554
(618) 277-0962 fax

ATTORNEYS FOR THE PLAINTIFFS

EXHIBIT 3

NO. 5-09-0633

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

RANDY McCALLUM and GWENDOLYN McCALLUM, his spouse, ADAM BLOWEY, JANICE CLARK and JAMES CLARK, her spouse, WILLIAM COLLINS and DOLLY COLLINS, his spouse, PATRICIA COVINGTON-GLADNEY, ANTIONETTE DAVIS and ELHAJJ DAVIS, her spouse, RUBY DIXON, ALFRED DUFF, YVONNE FRANCO, KATHY STOCKMAN, as Administratrix of the Estate of STEPHEN KIRCHER, Deceased, REBECCA LACY, SANDRA LAWRENCE, CHELSEA LEONARD, BARBARA LINGO, Individually and on behalf of the Estate of JOHN LINGO, Deceased, and the wrongful death heirs of JOHN LINGO, Deceased, MICHAEL NOENNIG and LUCY NOENNIG, his spouse, CYNTHIA PAIGE and MICHAEL PAIGE, spouses, DEAN POSPISIEL and ANGELA POSPISIEL, his spouse, KATHERINE RODGERS, SHARITA SWANN, as Personal Representative to JO ANN SWANN, Deceased, IRISH WHITTED and ANTHONY WHITTED, her spouse, FLOYD WINSLOW and NANCY WINSLOW, his spouse,

Plaintiffs-Respondents,

v.

GENERAL ELECTRIC COMPANY and GE HEALTHCARE, INC. f/k/a AMERSHAM, PLC,

Defendants-Petitioners,

AMERSHAM HEALTH AS, AMERSHAM HEALTH, INC., GE HEALTHCARE AS, TYCO HEALTHCARE GROUP, L.P., COVIDIEN, INC., MALLINCKRODT, INC.,

Appeal from the Circuit Court of St. Clair County.

No. 08-L-394

and JOHN/JANE/CORPORATE DOES 1-20,)
)
Defendants.)

ORDER

This cause coming to be heard on the petition for leave to appeal filed by defendants, General Electric Company and GE Healthcare, Inc, plaintiffs' answer thereto, defendants, Mallinckrodt, Inc., *et.al's* answer and joinder in petition for leave to appeal filed by the General Electric defendants, and the court being advised in the premises:

IT IS THEREFORE ORDERED that the Mallinckrodt defendants joinder in the petition for leave to appeal is STRICKEN for lack of jurisdiction as the motion to join was not filed within 30 days of the order appealed.

IT IS FURTHER ORDERED that the petition for leave to appeal filed by General Electric Company and GE Healthcare, Inc. is hereby GRANTED.

C01067

JANICE AND JAMES CLARK, Plaintiffs, v. GENERAL ELECTRIC COMPANY, et al. Defendants.	:	COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY JUNE TERM, 2008 CASE NO. 001067 CONTROL NO. _____

ORDER

AND NOW, this _____ day of _____, 2010, upon consideration of Defendants' Motion to Reconsider the Court's Order denying Defendants' Motion to Dismiss for *forum non conveniens*, it is hereby ORDERED that the Motion is GRANTED and that this action is DISMISSED WITHOUT PREJUDICE for re-filing in either Maryland, Virginia, the District of Columbia, or ultimately transferred to the federal Multi-District Litigation pending in Ohio.

BY THE COURT:

_____
Moss, J.